

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

GUS EDWARDS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 07-652-MJR
)	
M. HAWKINS, <i>et al.</i>,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

REAGAN, District Judge

Plaintiff, an inmate in the Menard Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. In this action, Plaintiff seeks to have a disciplinary action expunged and good time credits reinstated . This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A. Also before the Court is Plaintiff’s motion for appointment of counsel (Doc. 4).

Title 28 U.S.C. § 1915A provides:

- (a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is

plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; this action is subject to summary dismissal.

Based on information provided by confidential witnesses, Plaintiff was charged and found guilty of the following disciplinary violations: (1) bribery and extortion; (2) dangerous contraband; (3) impeding or interfering with an investigation; (4) giving false information; and (5) contraband/unauthorized property. As a result, Plaintiff received the following disciplinary sanctions: (1) 1 year C grade; (2) 1 year segregation; (3) revoke GCC or SGT 1 year; (4) housing change; (5) assignment change; and (6) disciplinary transfer. Plaintiff alleges that he is actually innocent of these violations. Plaintiff also claims that the disciplinary hearing was conducted through the cell door. Plaintiff seeks to have the disciplinary report and sanctions expunged and his good conduct credits reinstated. The complaint and attached exhibits indicate that Plaintiff has a mandamus action currently pending in state court to have his good conduct credits reinstated.

When a plaintiff brings an action under § 1983 for procedural due process violations, he must show that the state deprived him of a constitutionally protected interest in “life, liberty, or property” without due process of law. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). An inmate has a due process liberty interest in being in the general prison population only if the conditions of his or her confinement impose “atypical and significant hardship...in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995). The Seventh Circuit Court of Appeals has adopted an extremely stringent interpretation of *Sandin*. In this Circuit, a prisoner in disciplinary segregation at a state prison has a liberty interest in remaining in the

general prison population only if the conditions under which he or she is confined are substantially more restrictive than administrative segregation at the most secure prison in that state. *Wagner v. Hanks*, 128 F.3d 1173, 1175 (7th Cir. 1997). If the inmate is housed at the most restrictive prison in the state, he or she must show that disciplinary segregation there is substantially more restrictive than administrative segregation at that prison. *Id.* In the view of the Seventh Circuit Court of Appeals, after *Sandin* “the right to litigate disciplinary confinements has become vanishingly small.” *Id.* Indeed, “when the entire sanction is confinement in disciplinary segregation for a period that does not exceed the remaining term of the prisoner’s incarceration, it is difficult to see how after *Sandin* it can be made the basis of a suit complaining about a deprivation of liberty.” *Id.* Additionally, “prisoners possess neither liberty nor property in their classifications and prison assignments. States may move their charges to any prison in the system.” *DeTomaso v. McGinnis*, 970 F.2d 211, 212 (7th Cir. 1992), citing *Montanye v. Haymes*, 427 U.S. 236 (1976). See also *Meachum v. Fano*, 427 U.S. 215, 224 (1976) (the Constitution does not guarantee placement in a particular prison).

With the exception of the loss of good conduct credit, Plaintiff’s complaint does not allege that the disciplinary sanctions imposed him were substantially more restrictive than administrative segregation at the most secure prison in Illinois. Furthermore, plaintiff’s transfer did not implicate a protected liberty interest. Therefore, for the sanctions other than the loss of good conduct credit, the complaint does not state a cognizable due process claim.

A loss of good conduct credit, however, does implicate a liberty interest because such a loss potentially affects the length of Plaintiff’s sentence. As such, Plaintiff does present a cognizable due process claim regarding good conduct credit revoked in the disciplinary

proceeding. However, the proper method for challenging the revocation of good time credit is habeas corpus, but only after Plaintiff has exhausted his remedies through the Illinois state courts. *See, e.g., Heck v. Humphrey*, 512 U.S. 477, 480-81 (1994). As Plaintiff appears to be aware, the Illinois courts have recognized mandamus as an appropriate remedy to compel prison officials to award sentence credit to a prisoner. *See Turner-El v. West*, 811 N.E.2d 728, 733 (Ill. App. 2004) (citing *Taylor v. Franzen*, 417 N.E.2d 242, 247, *aff'd on reh'g*, 420 N.E.2d 1203 (Ill. App. 1981)). The State of Illinois must first be afforded an opportunity, in a mandamus action pursuant to 735 ILCS 5/14-101 *et seq.* to consider the merits of Plaintiff's claim. Because Plaintiff's mandamus action is still pending in state court, the instant claim is dismissed without prejudice to Plaintiff bringing his claims in a properly filed habeas corpus action, ***but only after he has completely exhausted his state court remedies.***

In summary, Plaintiff's complaint does not survive review under § 1915A. Accordingly, this action is **DISMISSED** without prejudice. Plaintiff is advised that the dismissal of this action will count as a strike under the provisions of 28 U.S.C. § 1915(g). Plaintiff's motion for appointment of counsel (Doc. 4) is **DENIED** as moot. Additionally, the Clerk of Court is directed to **CLOSE THIS CASE.**

IT IS SO ORDERED.

DATED this 1st day of November, 2007.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge